

STATE WATER CONTROL BOARD ENFORCEMENT ACTION

SPECIAL ORDER BY CONSENT WITH MAGNOLIA RUN APARTMENT, L.L.C. Permit No. VAR450719

SECTION A: Purpose

This is a Consent Special Order issued under the authority of §62.1-44.15(8a) and §62.1-44.15(8d) of the Code of Virginia, between the State Water Control Board and Magnolia Run Apartment, L.L.C. for the purpose of resolving certain violations of environmental law and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. “Code” means the Code of Virginia (1950), as amended.
2. “Board” means the State Water Control Board, a permanent citizens’ board of the Commonwealth of Virginia as described in the Code §§ 10.1-1184 and 62.1-44.7.
3. “Department” or “DEQ” means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in the Code § 10.1-1183.
4. “Director” means the Director of the Department of Environmental Quality.
5. “Order” means this document, also known as a Consent Special Order.
6. “Magnolia Run” means Magnolia Run Apartment, L.L.C., certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.
7. “TRO” means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
8. “Regulations” means 9 VAC 25-180-10 *et seq.* - Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation for Discharges of Storm Water from Construction Activities.
9. “Permit,” means VPDES Permit No. VAR450719.

SECTION C: Findings of Fact and Conclusions of Law

1. On August 29, 2001, DEQ received a registration statement from Magnolia Run for a VPDES storm water general permit associated with construction activity for the construction of the Magnolia Run Apartments. Magnolia Run Apartments is a proposed 200-unit apartment complex located on Lynnhaven Parkway, near the corner of Centerville Turnpike, in Virginia Beach, VA. The registration statement lists an estimated 19.93 acres as the total land area associated with the Magnolia Run Apartments site. Coverage under the Permit became effective September 19, 2001.
2. Section 9 VAC 25-180-60.A.1 of the Regulations states: "Deadlines for submitting Registration Statement – Except as provided in paragraphs A3 and A4 of this section, operators must submit a registration statement in accordance with requirements of this section at least two (2) days prior to the commencement of construction activities (i.e., the initial disturbance of soils associated with clearing, grading, excavation activities, or other construction activities)."
3. Section 9 VAC 25-180-10 of the Regulations states: " 'Industrial Activity' means construction activity including clearing, grading and excavation activities except: operations that result in the disturbance of less than five acres of total land area which are not part of a larger common plan of development or sale."
4. On September 21, 2001, DEQ Compliance staff (Staff) inspected the Magnolia Run Apartments construction site. A worker stated that construction work started approximately one month before September 21, 2001. On October 5, 2001, TRO issued a notice of violation to Magnolia Run for commencing construction activity before the approval of the registration statement.
5. On October 23, 2001, Mr. Claude Lym, Magnolia Run Apartments site contractor, met with Staff at the DEQ Tidewater Regional Office. Mr. Lym stated that construction activity began at the end of July 2001 without his knowledge. He ordered work to stop until the permit was issued. He stated construction had occurred for one week. Reportedly, construction did not start again until the registration statement had been approved.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. Code § 62.1-44.15(8a) and (8d), orders Magnolia Run, and Magnolia Run voluntarily agrees, to pay a civil charge of \$500 within 30 days of the effective date of the Order in settlement of the violations cited in this Order. The payment shall include Magnolia Run's Federal Identification Number. Payment shall be made by check, certified check, money order, or cashier's check payable to the "Treasurer, Commonwealth of Virginia," delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Magnolia Run, for good cause shown by Magnolia Run, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the Notice of Violation issued to Magnolia Run by DEQ on October 25, 2001. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, Magnolia Run admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Magnolia Run consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Magnolia Run declares it has received fair and due process under the Administrative Process Act, Va. Code §§2.2 - 4000 *et seq.*, and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by Magnolia Run to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Magnolia Run shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Magnolia Run shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Magnolia Run shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any

condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto; their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Magnolia Run. Notwithstanding the foregoing, Magnolia Run agrees to be bound by any compliance date, which precedes the effective date of this Order.
11. This Order shall continue in effect until Magnolia Run petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order.
12. By its signature below, Magnolia Run voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of _____, 2002.

Robert G. Burnley, Director
Department of Environmental Quality

Magnolia Run voluntarily agrees to the issuance of this Order.

By: _____

Date: _____

Commonwealth of Virginia

City/County of Virginia Beach, VA

The foregoing document was signed and acknowledged before me this _____ day of _____, 2002, by _____, who is

_____ of Magnolia Run, on behalf of the Corporation.

Notary Public

My commission expires: _____.